

1 DIVISION OF LABOR STANDARDS ENFORCEMENT  
2 Department of Industrial Relations  
3 State of California  
4 BY: MILES E. LOCKER, Attorney No. 103510  
5 45 Golden Gate Avenue, Suite 3166  
6 San Francisco, California 94105  
7 Telephone: (415) 975-2060

8 Attorney for the Labor Commissioner

9  
10 BEFORE THE LABOR COMMISSIONER  
11 OF THE STATE OF CALIFORNIA  
12

13 JAMES BREUER,	)	Case No. TAC 18-95
	)	
14 Petitioner,	)	SUPPLEMENTAL ORDER RE:
	)	JURISDICTIONAL ISSUES
15 vs.	)	AND NOTICE OF HEARING
	)	ON PETITION TO
16 TOP DRAW ENTERTAINMENT, INC.,	)	DETERMINE CONTROVERSY
17 a New York corporation; ANTONIO U.	)	
18 CAMACHO, an individual,	)	HEARING DATE: 8/27/97
	)	TIME: 10:00 a.m.
19 Respondent.	)	LOCATION: 107 S. Broadway,
	)	Suite 5015
	)	Los Angeles, CA

20 By this petition to determine controversy, filed on July 26,  
21 1995, petitioner James Breuer alleges, inter alia, that in or  
22 about July 1992, the parties entered into an agreement under which  
23 respondents were to perform services as petitioner's personal  
24 manager, and to attempt to procure employment within the  
25 entertainment industry for the petitioner; that thereafter  
26 respondents performed services as a talent agent within the  
27 meaning of Labor Code §1700.4(a); and that respondents violated  
28 Labor Code §1700.5 in that they were never licensed as a talent  
agency by the State Labor Commissioner. The petitioner seeks a  
determination that the parties' agreement is void ab initio and

EXHIBIT A

1 unenforceable, that the petitioner has no liability thereon to  
2 respondents, and an order requiring respondents to reimburse  
3 petitioner for all amounts received pursuant to the parties'  
4 agreement.

5 Respondents contend that the Labor Commissioner is without  
6 jurisdiction to hear and determine this controversy. In support  
7 of this contention, respondents have presented evidence that shows  
8 that respondent ANTONIO CAMACHO has been a New York resident at  
9 all times relevant herein; that respondent TOP DRAWER  
10 ENTERTAINMENT, INC., has been a New York corporation at all times  
11 relevant herein; that petitioner lived in New York State when the  
12 parties entered into their agreement; that thereafter petitioner  
13 lived in New York or New Jersey; that until the filing of this  
14 petition, James Breuer never claimed to be a California resident;  
15 and that the only payments made by petitioner to respondents were  
16 pursuant to petitioner's employment as an entertainer in New York.  
17 Respondents argue, therefore, that "the entire business  
18 relationship between petitioner and respondents took place outside  
19 the State of California". However, respondents concede that  
20 during their representation of petitioner, they booked him to  
21 "showcase" engagements in California to expose his talent to  
22 potential interested parties.

23 In response to our previous order re: jurisdictional issues,  
24 petitioner provided a declaration in which he alleges that from  
25 January 1993 to the present, he has been a California resident.  
26 This allegation is unsupported by any sort of documentation or  
27 corroborative evidence, and it fails to overcome respondent's  
28 showing that petitioner has been, at all relevant times, a

1 resident of New York or New Jersey. Nonetheless, petitioner has  
2 provided other evidence which, taken together, establishes that  
3 the Labor Commissioner has jurisdiction to hear and determine this  
4 controversy. Specifically, the evidence provided by petitioner  
5 shows that Antonio Camacho traveled to California with the  
6 petitioner during the period of March 16 through March 24, 1993,  
7 in order to promote petitioner's talents to potential employers at  
8 an industry "showcase" in Los Angeles; that respondents charged  
9 petitioner for their expenses in connection with this business  
10 trip to California; that Antonio Camacho obtained auditions for  
11 petitioner at various comedy clubs in Los Angeles and that those  
12 auditions were held during the period of October 26 to October 29,  
13 1992 or 1993; and that Camacho sent written materials to Pam  
14 Thomas in Pacific Palisades, California, and to Mitchell Bank at  
15 Disney Studios in Burbank, California, in an effort to procure  
16 employment for the petitioner.

17       The evidence presented establishes that respondents have  
18 sufficient contacts with California for the exercise of  
19 jurisdiction by the Labor Commissioner. The guiding principle,  
20 set forth by the U.S. Supreme Court in International Shoe Co. v.  
21 Washington (1945) 326 U.S. 310, is that a non-resident defendant  
22 is subject to personal jurisdiction if that defendant has "certain  
23 minimum contacts" with the forum state "such that the maintenance  
24 of the [action or proceeding] does not offend traditional notions  
25 of fair play and substantial justice". Due process requires that  
26 in order to exercise personal jurisdiction over a non-resident as  
27 to a specific claim or cause of action (1) the defendant must have  
28 "purposefully avail[ed] itself of the privilege of conducting


1 activities within the forum state, thus invoking the benefits and  
2 protections of its laws" [Sibley v. Superior Court (1976) 16  
3 Cal.3d 442, 446-447], and (2) the plaintiff's claim either arises  
4 out of or is connected with the defendant's forum-related  
5 activities [Buckey Boiler Co. v. Superior Court (1969) 71 Cal.2d  
6 893, 898-899) or there is a "substantial nexus" between  
7 defendant's forum-related activities and plaintiff's cause of  
8 action [Cornelison v. Chaney (1976) 16 Cal.3d 143, 149], and (3)  
9 the exercise of jurisdiction would be fair and reasonable [*Id.*].

10 As to the first factor, respondents' visit to California to  
11 attempt to procure employment for petitioner at the industry  
12 showcase, respondents' efforts in obtaining and scheduling  
13 auditions for petitioner in California, and respondents'  
14 communications with potential California employers on behalf of  
15 petitioner establish "purposeful availment". As to the second  
16 factor, petitioner's claim under the Talent Agencies Act is  
17 unquestionably connected with and arises out of respondents'  
18 forum-related activities of attempting to procure employment for  
19 petitioner without the requisite talent agency license. As to the  
20 final factor, it is apparent that most of the witnesses who could  
21 testify to respondents' alleged procurement activities in  
22 California are California residents and thus, a hearing in  
23 California would be fair and reasonable.

24 For all of the reasons set forth above, it is hereby  
25 determined that the Labor Commissioner has jurisdiction to hear  
26 and determine this controversy. An evidentiary hearing on the  
27 merits of the controversy shall be held on August 27, 1996 at  
28 10:00 a.m. at the State Building, 107 S. Broadway, Suite 5015, Los

1 Angeles, California, before the undersigned attorney specially  
2 designated by the Labor Commissioner to hear this matter. The  
3 determination of this controversy shall be based upon the  
4 testimony and evidence presented at this hearing.

5 DATED: 7/18/96

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7 MILES E. LOCKER  
8 Attorney for the Labor Commissioner  
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CERTIFICATION OF SERVICE BY MAIL  
(C.C.P. §1013a)

(JAMES BEUER v. TOP DRAW ENTERTAINMENT, INC.; ANTONIO U. CAMACHO)  
(TAC 18-55)

I, MARY ANN E. GALAPON, do hereby certify that I am employed in the county of San Francisco, over 18 years of age, not a party to the within action, and that I am employed at and my business address is 45 Fremont St., Suite 3220, San Francisco, CA 94105.

On July 18, 1996, I served the following document:

SUPPLEMENTAL ORDER RE: JURISDICTIONAL ISSUES AND

NOTICE OF HEARING ON PETITION TO DETERMINE CONTROVERSY

by placing a true copy thereof in envelope addressed as follows:

MARTIN D. SINGER, ESQ.  
LYNDA B. GOLDMAN, ESQ.  
LAVELY & SINGER  
2049 Century Park East, Suite 2400  
Los Angeles, CA 90067-2906

114 MICHAEL S. KROME, ESQ.  
101-05 Lefferts Boulevard  
Richmond Hill, NY 11419

and then sealing the envelope with postage thereon fully prepaid, depositing it in the United States mail in the city and county of San Francisco by ordinary first class mail.

I certify under penalty of perjury that the foregoing is true and correct. Executed on July 18, 1996, at San Francisco, California.

Mary Ann E. Galapon  
MARY ANN E. GALAPON